

§ 224.121

(a) Temporarily suspending any activity under a lease, business agreement, or right-of-way until the tribe complies with the TERA; or

(b) Rescinding approval of part of the TERA, or

(c) Rescinding all of the TERA and recommending that the Secretary re-assume activities under subpart G of this part.

§ 224.121 How may a tribe or a petitioner appeal the Director's decision about the tribe's compliance with the TERA?

A tribe or a petitioner, or both, may appeal the Director's decision on the petition under § 224.119 to the Principal Deputy Assistant Secretary—Indian Affairs under subpart I of this part.

Subpart F—Periodic Reviews

§ 224.130 What is the purpose of this subpart?

This subpart describes how the Secretary and a tribe will develop and perform the periodic review and evaluation required by the Act and by a TERA.

§ 224.131 What is a periodic review and evaluation?

A periodic review and evaluation is an examination the Director performs to monitor a tribe's performance of activities associated with the development of energy resources and to review compliance with a TERA. During the TERA consultation, a tribe and the Director will develop a periodic review and evaluation process that addresses the tribe's specific circumstances and the terms and conditions of the tribe's TERA. The tribe will include the agreed-upon periodic review and evaluation process in its final proposed TERA.

§ 224.132 How does the Director conduct a periodic review and evaluation?

(a) The Director will conduct a periodic review and evaluation under the TERA, in consultation with the tribe, and in cooperation with other Departmental bureaus and offices whose activities the tribe assumed or that perform activities for the tribe.

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(b) The Director will communicate with the Designated Tribal Official throughout the process established by this section.

(c) During the periodic review and evaluation, the Director will:

(1) Review relevant records and documents, including transactions and reports the tribe prepares under the TERA;

(2) Conduct on-site inspections as appropriate; and

(3) Review compliance with statutes and regulations applicable to activities undertaken under the TERA.

(d) Review the effect on physical trust assets resulting from activities undertaken under a TERA.

(e) Upon written request, the tribe should provide the Director with records and documents relevant to the provisions of the TERA. In addition, the tribe should identify any information in these submitted records and documents that is confidential, commercial and financial. Specific exceptions to disclosure under the Freedom of Information Act, or other statutory protections against disclosure, may apply and preclude disclosure of this information to third parties as provided for in § 224.55.

§ 224.133 What must the Director do after a periodic review and evaluation?

After a periodic review and evaluation, the Director must prepare a written report of the results and send the report to the Designated Tribal Official.

§ 224.134 How often must the Director conduct a periodic review and evaluation?

The Director must conduct a periodic review and evaluation annually during the first 3 years of a TERA. After the third annual review and evaluation, the Secretary and the tribe may mutually agree to amend the TERA to conduct periodic reviews and evaluations once every 2 years.

§ 224.135 Under what circumstances may the Director conduct additional reviews and evaluations?

The Director may conduct additional reviews and evaluations:

(a) At a tribe's request;

(b) As part of an investigation undertaken when the tribe notifies the Director of a violation or breach;

(c) As part of an investigation undertaken because of a petition submitted under subpart E of this part;

(d) As follow-up to a determination that harm or the potential for harm to a physical trust asset, previously identified in a periodic review and evaluation, exists; or

(e) As the Secretary determines appropriate to carry out the Secretary's trust responsibilities.

NONCOMPLIANCE

§ 224.136 How will the Director's report address a tribe's noncompliance?

This section applies if the Director conducts a review and evaluation or investigation of a notice of violation of Federal law or the terms of a TERA.

(a) If the Director determines that the tribe has not complied with Federal law or the terms of a TERA, the Director's written report must include a determination of whether the tribe's noncompliance has resulted in harm or the potential for harm to a physical trust asset.

(b) If the Director determines that the tribe's noncompliance may cause harm or has caused harm to a physical trust asset, the Director must also determine whether the noncompliance cause imminent jeopardy to a physical trust asset.

§ 224.137 What must the Director do if a tribe's noncompliance has resulted in harm or the potential for harm to a physical trust asset?

If, because of the tribe's noncompliance with Federal law or the terms of a TERA, the Director determines that there is harm or the potential for harm to a physical trust asset that does not rise to the level of imminent jeopardy to a physical trust asset, the Director must:

(a) Document the issue in the written report of the review and evaluation;

(b) Report the issue in writing to the tribal governing body;

(c) Report the issue in writing to the Assistant Secretary—Indian Affairs; and

(d) Determine what action, if any, the Secretary must take to protect the physical trust asset, which could include temporary suspension of the activity that resulted in non-compliance with the TERA or other applicable Federal laws or rescinding approval of all or part of the TERA.

§ 224.138 What must the Director do if a tribe's noncompliance has caused imminent jeopardy to a physical trust asset?

If the Director finds that a tribe's noncompliance with a Federal law or the terms of a TERA has caused imminent jeopardy to a physical trust asset, the Director must:

(a) Immediately notify the tribe by a telephone call to the Designated Tribal Official followed by a written notice by facsimile to the Designated Tribal Official and the tribal governing body of the imminent jeopardy to a physical trust asset. The notice must contain:

(1) A description of the tribe's noncompliance with Federal law or the terms of the TERA;

(2) A description of the physical trust asset and the nature of the imminent jeopardy to a physical trust asset resulting from the tribe's noncompliance; and

(3) An order to the tribe to cease specific conduct or take specific action deemed necessary by the Director to correct any condition that caused the imminent jeopardy to a physical trust asset.

(b) Issue a finding that the tribe's noncompliance with the TERA or a Federal law has caused imminent jeopardy to a physical trust asset.

§ 224.139 What must a tribe do after receiving a notice of imminent jeopardy to a physical trust asset?

(a) Upon receipt of a notice of imminent jeopardy to a physical trust asset, the tribe must cease specific conduct outlined in the notice or take specific action the Director orders that is necessary to correct any condition causing the imminent jeopardy; and

(b) Within 5 days of receiving a notice of imminent jeopardy to a physical trust asset, the tribe must submit a written response to the Director that:

(1) Responds to the Director's finding that the tribe has failed to comply